

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CRs No. 391 to 394 of 2002

Reserved on : July 20, 2006

Decided on : July 24, 2006

Amar Nath	<i>versus</i>	S.K. Sharma (CR No.391/2002)
Chanderkanta & others	<i>versus</i>	S.K. Sharma (CR No.392/2002)
Sat Pal	<i>versus</i>	S.K. Sharma (CR No.393/2002)
Raj Dulari and others	<i>versus</i>	S.K. Sharma (CR No.394/2002)

Coram

The Hon’ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the petitioners:	Mr. R.L. Sood, Senior Advocate, with Mr. Vikas Rajput, Advocate, in all the petitions.
For the Respondent :	Mr. D.D. Sood, Senior Advocate, with Mr. Sunil Awasthi, Advocate, in all the petitions.

Surjit Singh, Judge

These four revision petitions involve common questions, pertaining to the same building, from which eviction of different tenants has been sought on various grounds and, hence, they are being disposed of by a common order.

2. First, the relevant facts may be noticed. Respondent Dr. S.K. Sharma, hereinafter referred to as landlord, is the owner of a building known as Siri Niwas situated in Solan Town. There are some tenants in the building. He filed petitions, under Section 14 of the Himachal Pradesh Urban Rent Control Act, for eviction of the tenants

Whether the reporters of the local papers may be allowed to see the Judgment?

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on various grounds. One of such grounds, taken in all the petitions, was that the building had become unfit and unsafe for human habitation and so it was bonafide required for rebuilding and reconstruction. He examined one Surjeet Singh as an expert to prove the plea that the building is in a dilapidated state and required reconstruction/rebuilding which cannot be carried out unless the tenants vacate it. The Rent Controller passed an order of eviction in favour of the landlord and against the tenants, revision petitioners in these petitions. The tenants filed appeals before the Appellate Authority, Solan. During the pendency of the appeals the tenants moved applications under Order 18 Rule 17 CPC, in which prayer was made that witness Surjeet Singh, expert, be recalled for further cross-examination by them, because he was intended to be confronted with his previous statement, which he made sometime in the year 1977 before a Rent Controller at Shimla, wherein he admitted that neither he possessed any degree nor diploma in Civil Engineering or Architecture from any recognized university, so as to contradict his statement made before the Rent Controller, Solan, that he was a graduate in engineering. Prayer was also made for leading some other additional evidence. That application was dismissed by the Appellate Authority vide order dated 20.7.1992. A revision petition was filed against that order in this Court, which was disposed of on 23.10.1992, by the following order:

“Heard. Dismissed as interlocutory.

However, it is clarified that the dismissal of the revision petition in limine will not preclude the petitioner from moving a fresh application before the appellate

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authority, seeking permission to place on record material or to pray for recalling PW 2 Surjit Singh only as regards his qualifications. The application, if any, moved in this behalf will be considered and decided by the appellate authority on its merits. If any application is moved by the petitioner and any adverse decision thereupon is arrived at by the appellate authority, two weeks time will be allowed to the petitioner to enable him to challenge the said order.

Since the record has been received in this Court, the same be sent down forthwith. The parties are directed to appear before the appellate authority on 19th November, 1992.

Interim relief vacated.”

3. After the passing of the aforesaid order, the tenants made separate applications, under Order 41 Rule 27 CPC, in their respective appeals. On 16.1.1993, the Appellate Authority passed the following order in each of the appeals filed by the tenants (revision petitioners):

“Heard.

Appellant states that his advocate has not come from Shimla and as such the case be adjourned to some other date. In view of this, the case is adjourned to 6.3.1993.

It is made clear that on 6.3.93 the arguments of the application for additional evidence will be heard alongwith the arguments on the main appeal as is required under the procedural Law. Since the appellant has already been allowed to file rejoinder, though, generally rejoinder is not filed in such cases, the rejoinder, if any, be also filed on the above mentioned date. As such, the case be now put up on 6.3.93 for

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rejoinder and arguments on the application and also arguments of the main appeal.”

4. The tenants filed revision petitions against the aforesaid order, dated 16.1.1993, because, according to them, their applications for re-summoning witness Surjeet Singh were required to be disposed of before the disposal of the main appeal. Not only this, 14 days time was also to be granted after the disposal of the applications to the tenants to file revision petitions in this Court in case orders on their applications were passed against them. This Court, vide order dated 12.4.2002, allowed the revision petitions. The operative part of the order passed by this Court, on 12.4.2002, reads as follows:

“In view of the aforesaid discussion as well as without going into merits of the final orders passed by the learned appellate authority below on 6th April, 1998 in all these four revisions, while setting aside these orders and allowing the revisions, Appellate Authority is directed to deal with the cases in terms of the order of this court dated 23.10.92 extracted hereinabove. If still the court chooses to deal with the application while hearing the main matter, then directions issued regarding allowing two weeks’ time shall be carried out by it strictly in its letter and spirit. Parties through their learned counsel are directed appear before the appellate authority below on 4th June, 2002 whereafter the appellate authority is directed to proceed further in the light of what has been observed hereinabove as well as in the order dated 23.10.1992 supra.”

5. Vide order dated 26.9.2002, the Appellate Authority disposed of the applications filed by the tenants for recalling witness

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Surjeet Singh, as also another application, under Section 151 CPC, for raising additional grounds with respect to the jurisdiction of the Rent Controller. The Appellate Authority dismissed both the applications. It is against the order of the dismissal of these two applications that the present revision petitions are directed.

6. It is alleged that the very fact that the liberty was reserved to the tenants to make fresh applications for re-summoning witness Surjeet Singh by the High Court, vide its order dated 23.10.1992, was suggestive that this Court felt that the re-summoning of the witness was required and that the Appellate Authority ought to have taken this fact into consideration but it dismissed the applications by holding that the applications moved earlier for recalling witness Surjeet Singh stood dismissed by it and the revision petitions against the order of dismissal of those applications had also been dismissed by the High Court, vide order dated 23.10.1992, ignoring the fact that liberty had been reserved to the tenants to file fresh applications. It is also alleged that the Appellate Authority has applied the principles of Order 41 Rule 27 CPC while dealing with the question whether recalling of witness Surjeet Singh was required or not whereas principle of Order 18 Rule 17 CPC was required to be applied, because the initial application, which had been moved and which was dismissed in the year 1992, was under Order 18 Rule 17 CPC and subsequent application was in continuation of the earlier application.

7. Order dismissing the other application, i.e. the application, under Section 151 CPC, for taking additional grounds in

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support of the plea that the Rent Controller did not have the jurisdiction, has been assailed on the ground that the Appellate Authority was influenced by an earlier order passed on an application, under Order 6 Rule 17 CPC, whereby prayer for amendment of written replies to the petitions for eviction, had been dismissed. It is alleged that the said order had no connection with the application for taking additional grounds in appeal.

8. I have perused the record and heard the learned counsel for the parties.

9. No doubt, one of the reasons advanced by the Appellate Authority in its order for dismissing the application for recalling witness Surjeet Singh is that the earlier application in which a similar prayer had been made stood dismissed by it and revision petition filed against the said order had also been dismissed by the High Court and the same cannot be upheld for the simple reason that liberty had been reserved to the tenants to file fresh applications by the same order by which the revision petition had been dismissed, but there are a couple of other reasons, advanced by the Appellate Authority, in support of its order of dismissal of the applications. One of the reasons is that the applications are neither supported by affidavits of the tenants nor have the certified copies of the alleged previous statement of Surjeet Singh, made by him in the year 1977 before a Rent Controller at Shimla, been filed with the applications. This reason alone, in my view, was enough to dismiss the applications. There being no material in support of the applications either in the form of affidavits or in the form of certified copies of the alleged

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previous statement, the Appellate Authority was fully justified in dismissing the applications especially when the landlord in his reply to these applications categorically denied that Surjeet Singh had made any such statement as was being attributed to him and that in fact he had stated that he initially obtained Diploma in Civil Engineering, thereafter did his AMIE and after that he had been teaching the students of Civil Engineering of Polytechnic Baijnath. Not only this, the landlord filed his affidavit in support of the aforesaid denial and averments made in his reply. A reading of Order 19 Rules 2 & 3 of the Code of Civil Procedure suggests that there has to be some evidence in support of an interlocutory application and that such evidence may be given by affidavit. In the present case, as already noticed, there was no material substantiating the averments made in the application and, therefore, no fault can be found with the order of dismissal of the application.

10. As regards the challenge to that part of the order whereby second application, under Section 151 CPC, has been dismissed, it is borne out from record that earlier the tenants had moved applications, under Order 6 Rule 17 CPC, in their respective cases, for amending written replies so as to add certain facts suggesting that the Rent Controller did not have the jurisdiction in the matter. The grounds, which are mentioned in the applications, are similar to the facts that were mentioned in the earlier applications, under Order 6 Rule 17 CPC.

11. It is well settled that during the course of the hearing of an appeal, an appellant can assail the judgment, under challenge, not

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only on those grounds as are stated in the memorandum of appeal but on other grounds also as are borne out from the record and applications are never made seeking the leave of the Court for raising some additional grounds of appeal. These applications, under Section 151 CPC, were thus frivolous and have rightly been rejected.

12. For the foregoing reasons, the revision petitions are dismissed with costs, quantified at Rs.10,000/- in each case.

July 24, 2006(sd)

**(Surjit Singh)
Judge.**